

Successor liability provisions in the Illinois Retailers' Occupation Tax are found at 35 ILCS 120/5j. (This is a GIL).

August 30, 2001

Dear Xxxxx:

This letter is in response to your letter dated August 29, 2001 to NAME of the Illinois Attorney General's Office. I am also in receipt of copies of the documents you faxed that relate to your client's repossession of Franchise Nos. ### and ###. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This letter follows our telephone conversation today wherein I asked you for your opinion concerning the potential responsibility of COMPANY, for the repossession of the Franchise Nos. ## and ### sold to PERSON. Accompanying this letter are the following documents:

1. Purchase Agreement;
2. Security Agreement;
3. Escrow Receipt and Agreement;
4. Bankruptcy Claim;
5. Motion to Lift Stay;
6. Affidavit of Default and Notice of Default;
7. UCC1 filings; and
8. Termination Agreement.

It is the position of COMPANY that the repossession of the stores will not cause them to become liable as a successor-in-interest to the indebtedness owed by PERSON to the Illinois Department of Revenue. I am asking that you provide written confirmation as soon as practically possible. There is a landlord forcible entry and detainer action proceeding which will occur on Friday which will terminate the lease for these stores. Therefore, we must assume possession of those stores immediately to preserve them. Time is of the essence. Thank you for your kind cooperation.

Successor liability provisions in the Illinois Retailers' Occupation Tax are found at 86 Ill. Adm. Code 130.1701. The purpose of the provisions is to maximize the collection of delinquent taxes from businesses that might otherwise liquidate assets and disappear.

This regulation states that:

"If any taxpayer, outside the usual course of his business, sells or transfers the major part of any one or more of

- (1) the stock of goods which he is engaged in the business of selling, or
- (2) the furniture or fixtures, or
- (3) the machinery and equipment,
- (4) the real property of any business that is subject to the provisions of the Act, the purchaser or transferee of such assets shall, no later than 10 days after the sale or transfer, file a notice of sale or transfer of business assets with the Chicago office of the Department...."

These are the circumstances under which a seller must give notice of the sale to the Department pursuant to the Retailers' Occupation Tax Act. To the extent that the taxpayer is a retailer, he will have to comply with requirements under the Retailers' Occupation Tax Act.

Special procedures exist for the successor to minimize exposure from the predecessor. These procedures are described at subparts (a)(4) and (b) of 86 Ill. Adm. Code 130.1701. The notice of sale/purchase of business assets must be reported to the Department no later than 10 days after the sale or transfer.

However, if the successor does no more than repossess property that is the subject of an installment contract, we do not believe that the situation is subject to the bulk sales reporting requirements because no "sale or transfer" within the statutory meaning has occurred. Please refer to 86 Ill. Adm. Code 130.1701(g)(3). Please be advised that to the extent that the successor has property transferred to him that was not part of the installment contract, there would be a "transfer" subject to bulk sales reporting if the property is a major part of one of the asset types listed above.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.